



BUCKINGHAM MINING COMPANY, INCORPORATED
OF THE STATE OF MONTANA
PLAINTIFF
VS.
JOHN J. BUCKINGHAM, JR.
DEFENDANT

STATE OF MONTANA,
BUCKINGHAM MINING COMPANY

ON PETITION FOR WRIT OF HABEAS CORPUS
AND FOR WRIT OF HABEAS CORPUS FOR THE
NINTH CIRCUIT

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I

OPINIONS BELOW

The opinion of the Circuit Court of Appeals is reported in 99 Fed. Rep. (2d Series) 651, and the opinion of the District Court of the United States for the District of Idaho is reported in 19 Fed. Supp. 587. The opinion of the Supreme Court of Idaho is reported in 59 Pac. (2d) 1087. Certiorari denied January 11, 1937. 299 U. S. 615, 57 S. Ct. 319, 81 L. Ed. 453.

II

STATUTES INVOLVED

Federal Interpleader Act, Title 28 U. S. C. A., Sec. 41, Subdivision 26, entitled "Original Jurisdiction of Bills of Interpleader and Bills in the Nature of Interpleader" enacted January 20, 1936, Chap. 13, Sec. 1, 49 Statutes at Large, 1096, is the statute involved and under which the respondent, Sunshine Mining Company, filed its bill of interpleader.

III

GROUND ON WHICH JURISDICTION OF COURT IS INVOKED

The respondent, Sunshine Mining Company, being a Washington corporation and doing business in the state of Idaho, filed its bill of interpleader in the District Court of the United States, for the District of Idaho, Northern Division, on the 17th day of March, 1937, under and pursuant

to the Interpleader Act hereinabove referred to. Defendants named in the bill of interpleader were Evelyn H. Treinies, Seattle First National Bank (Spokane and Eastern Branch), administrator with the will annexed of John Pelkes, deceased, A. W. Hawkins, as Judge of the Superior Court of the State of Washington in and for Yakima County, and J. C. Cheney, as Receiver, who were all citizens of the state of Washington, and Katherine Mason and T. R. Mason, wife and husband, Lester S. Harrison and Grace G. Harrison, husband and wife, Walter H. Hanson and Jane Doe Hanson, husband and wife, and F. C. Keane, all citizens and residents of the state of Idaho, residing within the jurisdiction of the United States District Court, for the District of Idaho, Northern Division.

The Sunshine Mining Company alleged in its bill of interpleader the diversity of citizenship of said defendants; that there were adverse claims of ownership being made to 16,000 shares of its stock and the dividends accrued and accruing thereon; that the Sunshine Mining Company was a disinterested stakeholder; and that the amount in controversy exceeded the sum of \$3,000.00. All of the allegations in said bill of interpleader as to diversity of citizenship and amount involved were admitted by the respective defendants. All of the defendants appeared generally in said action. A. W. Hawkins, as Judge, and J. C. Cheney, as Receiver, made their answer and return to

the bill of interpleader. Evelyn H. Treinies and the Bank, as administrator, and Katherine Mason and her husband, and the remaining defendants filed their answers and cross-complaints setting up their respective adverse claims of ownership to the stock and dividends.

IV

STATEMENT OF THE CASE

The respondent, Sunshine Mining Company, feels that a more complete and detailed history and background to this litigation should be set forth than that contained in the statement of the case made by the petitioner herein.

The respondent, Sunshine Mining Company, has been involved in this litigation since August 4, 1934, for no other reason than that it is the corporation which happened to issue the stock which is the subject matter of this controversy. Its only interest in this litigation has been to recognize the rightful owner of the stock. Since the 4th day of August, 1934, the litigation between Katherine Mason and her husband, on one side, and John Pelkes and Evelyn H. Treinies, on the other side, has raged back and forth in the state courts of Idaho and Washington. The respondent, Sunshine Mining Company, being a Washington corporation and all of its mining property being located in the state of Idaho, necessarily has had to qualify with the laws of the state of Idaho to transact business therein as a foreign

corporation. As a result of this situation, the respondent has been subject to the jurisdiction of the state court of Washington and of the state court of Idaho, and has been made a party defendant in the various suits that have been instituted and maintained in the two state courts. In order that the various steps taken may be before the court for its consideration, the respondent, Sunshine Mining Company, will review the cases and give their status as concisely as possible as of March 17, 1937, the date on which the Sunshine Mining Company filed its bill of interpleader in the District Court of the United States, for the District of Idaho.

IDAHO CASES

1. On August 4, 1934, Katherine Mason and T. R. Mason filed suit in the Idaho State District Court for Shoshone County, against John Pelkes, Evelyn H. Treinies, Pierre Thinnies, Frances Thinnies and Sunshine Mining Company. (R. 126). In her complaint Katherine Mason alleged that she was the owner of 15,299 shares of stock of the Sunshine Mining Company, being one-half of the 30,598 shares of stock formerly owned by her step-father, John Pelkes, and her mother, Amelia Pelkes. She further alleged that her step-father had agreed to hold one-half of said original 30,598 shares of stock in trust for her and to deliver the same to her and account for the dividends paid thereon upon her demand. She further alleged that all of

said original block of stock had been transferred and disposed of by her step-father, the last portion of said stock, consisting of 16,000 shares, having been transferred to Evelyn H. Treinies, who took the same with notice of the rights of Mrs. Mason. (R. 127). The Sunshine Mining Company was made a party to this suit and an injunction pendente lite was issued enjoining the company from transferring the stock or paying any dividends thereon pending the determination of the action. All parties appeared generally in said cause, the defendant, John Pelkes, alleging, among other things, as a defense to said action, the proceedings in the Superior Court of the state of Washington which will be later referred to. (R. 129-139). The trial of said cause was had before the Honorable Miles S. Johnson, and on the 24th day of September, 1935, he rendered his decision whereby he determined Katherine Mason to be the owner of 7649 shares and Evelyn H. Treinies to be the owner of 8351 shares of said stock. Findings of fact (R. 152) and conclusions of law (R. 163) and decree (R. 165) were entered pursuant to said opinion. By the decree entered Katherine Mason was decreed to be the owner of 7649 shares of said stock and Evelyn H. Treinies was decreed to be the owner of the balance of 16,000, or 8351 shares. Pierre Thinnes and Frances Thinnes were dismissed out of the case prior to trial. This judgment and decree further restrained and enjoined the defendants, and each of them, from commencing or taking any further proceedings

in the Superior Court of the State of Washington in the matter of the Estate of Amelia Pelkes, deceased, or in any court with reference to the subject matter of the action or with reference to the relief given to the parties, and permanently enjoined them from taking any proceedings except by appeal to the Supreme Court of the state of Idaho. (R. 167).

2. This judgment and decree was appealed to the Supreme Court of Idaho, Pelkes and Treinies and the Sunshine Mining Company appealing and the Masons cross-appelling. (R. 169).

3. The Supreme Court of Idaho determined the appeal on the 23rd day of July, 1936, modifying the decision of the State District Court and holding that Katherine Mason was the owner of 15,299 shares of said stock, and likewise holding that Pelkes and Treinies be required to account for the dividends collected by them on this stock. (*Mason v. Pelkes*, 59 Pac. (2d) 1087). (R. 167). This opinion affirmed the opinion of the Idaho State District Court restraining the parties from proceeding further with litigation in Washington. (R. 172).

4. On the 18th day of August, 1936, after the remittitur came down from the Supreme Court of the State of Idaho, findings of fact (R. 192), conclusions of law (R. 205) and decree (R. 207) on the remittitur were entered in the State District Court. This judgment decreed that Kather-

ine Mason was the owner of 15,299 shares of Sunshine Mining Company stock in controversy and directed the Sunshine Mining Company to recognize her ownership to said stock. It likewise gave judgment in favor of Katherine Mason and her husband, T. R. Mason, against John Pelkes and Evelyn H. Treinies for \$19,429.73, and directed that execution issue therefor. The judgment further enjoined all of the defendants from taking any proceedings in courts anywhere with reference to the subject matter of this action and the relief given the plaintiff save and except for taking additional proceedings for the protection of their rights in said action. (R. 209).

5. John Pelkes and Evelyn H. Treinies then filed their petition for injunction and supersedeas pending petition for certiorari in the Supreme Court of the United States and, as a part of said petition, it was alleged that Evelyn H. Treinies and John Pelkes had surrendered the stock involved in said litigation into the registry of the Idaho state court. Subsequently and on the 22nd day of August, 1936, an injunction pending petition for certiorari was granted.

6. Pelkes and Treinies then filed their petition for writ of certiorari which was later denied by the Supreme Court of the United States January 11, 1937. (57 S. Ct. 319; 299 U. S. 615).

WASHINGTON CASES

It is necessary to give a brief history of the proceedings in the Amelia Pelkes Estate in order to set forth clearly the background of the Washington litigation as it existed on March 17, 1937.

John Pelkes and the mother of Katherine Mason, Amelia Pelkes, were married about 1889. At that time Mrs. Pelkes' daughter, now Katherine Mason, was of the age of about eight or nine years, and she continued to reside with her mother and Mr. Pelkes until the time of her marriage. A number of years prior to Mrs. Pelkes' death, which occurred in 1922, she and her husband moved to Spokane, Washington, where they resided at the time of her death. (R. 173). A few years prior to Mrs. Pelkes' death a conversation was had between Mr. and Mrs. Pelkes and Katherine Mason, in which it was explained to Katherine Mason that they were getting along in years and desired her to know what disposition they were making of their property by will. She was told that if her mother died first she, Mrs. Mason, was to receive her mother's half of the property, but if Mr. Pelkes died first all of the property was to go to Mrs. Pelkes and on her death it was to all go to Katherine Mason; and in the event that Mr. Pelkes died, if his wife had predeceased him, Mrs. Mason was to get all of his estate with the exception of \$5,000.00 which he wanted to divide among some of his nieces and nephews and a

sister in the Old Country. (R. 173).

After Mrs. Pelkes' death, Mrs. Mason and Mr. Pelkes read the last will and testament of Amelia Pelkes and found that it provided that half of her estate, which would be one-fourth of the community property, was to go to John Pelkes, and the other half of her estate, or one-fourth of all the community property, was to go to Katherine Mason. This, apparently, was not in accordance with the wishes of the deceased as understood by Mr. Pelkes and Mrs. Mason. (R. 174).

The will of Amelia Pelkes was admitted to probate in the Superior Court of Spokane County, Washington, on May 1st, 1922. (R. 264). An inventory of the estate was returned and filed, but no mining stock was included in that inventory for the reason that it was thought to be valueless at that time. Subsequently, and on August 9, 1923, a final decree of distribution was entered in the estate matter, whereby one-half of the decedent's property was distributed to John Pelkes and one-half thereof to Katherine Mason, and, by this decree of distribution, John Pelkes became the owner of an undivided three-fourths interest of the community property and Mrs. Mason became the owner of an undivided one-fourth interest. The decree also covered not only property described in the inventory and estate proceedings but "all other property not now known or described which may belong to said estate". (R. 123).

Following the decree of distribution Mr. Pelkes removed to Kellogg, Idaho, to live with his daughter, Mrs. Mason, and her husband, and at that time an agreement was entered into between Mrs. Mason and Mr. Pelkes, the substance of which gives rise to this controversy.

Mr. Pelkes contended that he agreed with Mrs. Mason that she should have one-half of the property except for the mining stock instead of one-fourth thereof which she was entitled to under the terms of her mother's will, and he was to have the other half of said property and all of the mining stock, and that a division was made by them in conformity with that agreement. On the other hand, Mrs. Mason claimed that she was to have one-half of all the property, including one-half of the mining stock, and that division was made on that basis, except that all of the mining stock was to be held by Mr. Pelkes in his name, he to account for her one-half of the stock when it became of value and at such time as she demanded it. (R. 177-178). Mrs. Mason further contended that this arrangement continued until on or about November 8, 1933, when she learned that Mr. Pelkes had assigned and transferred 16,000 shares of stock, being all of the stock of the Sunshine Mining Company which he owned on that date, to Evelyn H. Treinies.

Shortly following this time and on August 4, 1934, Katherine Mason instituted suit in the Idaho Court herein-

above referred to. (R. 126). After the entry of the decree of distribution in the matter of the estate of Amelia Pelkes, deceased, in the Superior Court of Spokane County, Washington, on August 9, 1923, Mr. Pelkes and Mrs. Mason looked upon and treated the probate proceedings as closed until about the time Mrs. Mason started her suit in the Idaho Court.

1. With the probate record in the Washington Court in this status and with Mrs. Mason's action pending in the Idaho Court, she, on or about the 19th day of December, 1934, filed her petition in the probate proceedings alleging, among other things, that 30,598 shares of the capital stock of the Sunshine Mining Company had not been inventoried or probated and that it was an asset belonging to the estate and subject to the probate proceedings, and further requesting that Pelkes, as executor, be removed and that letters of administration be issued to some competent person. (R. 214). A citation was issued on this petition and Pelkes filed a return and cross-petition, wherein he alleged that he was the sole owner of the stock. (R. 217). Thereafter and before any hearing was had on the petitions, T. R. Mason, husband of Katherine Mason, who was not a party to the proceedings in Washington in the matter of the estate of Amelia Pelkes, deceased, filed a petition in the Idaho action, wherein he prayed for an order of the Idaho State Court restraining John Pelkes and Katherine Mason,

their agents and attorneys, from proceeding with the litigation pending in the state of Washington, in the matter of the estate of Amelia Pelkes, deceased. On May 21, 1935, an order as entered in the Idaho State Court restraining said parties from taking any further proceedings in the Washington Court until the further order of the court. (R. 238).

While that order was in effect and on the 31st day of May, 1935, an order was entered in the matter of the estate of Amelia Pelkes, deceased, in the Superior Court of Spokane County, Washington, entitled "Findings and Order Approving Partition, Correcting Receipts for Distributive Shares, and Discharging Executor". This order purported to adjudicate John Pelkes to be the owner of said 30,598 shares of stock. (R. 282). This order did not however as stated on page 6 of petitioner's brief award the Sunshine stock to Pelkes' transferee, Evelyn Treinies, nor did it restrain the Idaho group from further litigating the matter in any court.

The Sunshine Mining Company was not a party in any of the estate proceedings, and no attempt was made to join the company in any of those proceedings. This order in the estate proceedings entitled "Findings and Order Approving Partition, Correcting Receipts for Distributive Shares, and Discharging Executor" is the order which was pleaded, among other things, by John Pelkes as one of his defenses in the Idaho suit. (R. 129). Evelyn H. Treinies, however,

did not set up this order as a defense in her answer in the Idaho State Court. (R. 139).

2. On the 18th day of October, 1935, which was after the decision in the Idaho State Court and before the appeal thereon had been determined by the Supreme Court of Idaho, John Pelkes and Evelyn H. Treinies filed suit in the Superior Court of the State of Washington, in and for Spokane, Washington, against Katherine Mason, T. R. Mason, Lester S. Harrison, Walter H. Hanson, F. C. Keane, Richard S. Munter and Sunshine Mining Company. (R. 243). In this case the Sunshine Mining Company interposed its motion to quash, motion for change of venue and demurrer, and at the conclusion of the arguments on the motions and demurrer the attorneys for Pelkes and Treinies moved to dismiss said cause without prejudice, which motion was granted.

3. On the 12th day of August, 1936, which was less than a month after the Supreme Court of Idaho decided the case of *Mason vs. Pelkes* (R. 167), John Pelkes and Evelyn H. Treinies again filed suit in the Superior Court of the State of Washington, in and for Spokane County, against Katherine Mason and T. R. Mason, wife and husband, Lester S. Harrison and Grace G. Harrison, husband and wife, Walter H. Hanson and Jane Doe Hanson, husband and wife, F. C. Keane and Sunshine Mining Company. In this case the following steps were taken (R. 256): (a) The Sunshine Min-

ing Company interposed its demurrer and motion for change of venue; (b) On January 11, 1937, an order was entered without notice purporting to appoint J. C. Cheney as receiver; (c) On January 19, 1937, the Seattle First National Bank (Spokane and Eastern Branch), as administrator with the will annexed of the estate of John Pelkes, deceased, and Evelyn H. Treinies, as plaintiffs, (Pelkes in the meantime having died) filed their amended complaint in said cause; (d) On February 5, 1937, said cause was transferred from Spokane County to Yakima County for further proceedings. (R. 256). Arguments were had in Yakima County before the Honorable A. W. Hawkins, Judge of the Superior Court of the State of Washington, in and for Yakima County, who took the matter under advisement.

At this time, March 17, 1937, the records in the Idaho and Washington state courts were in this status: There was a judgment and decree of the State District Court of Idaho which had been modified and affirmed by the Supreme Court of the State of Idaho which adjudged Katherine Mason to be the owner of said 15,299 shares of stock in the Sunshine Mining Company; on this judgment and decree of the Idaho Supreme Court, the Supreme Court of the United States had denied a petition for writ of certiorari; in the Washington State Court suit was pending against the Masons and the Sunshine Mining Company involving the same stock; whereby the estate of John Pelkes

and Evelyn H. Treinies were attempting to assert their ownership to the same block of stock, contrary to the decree of the Idaho Supreme Court and in violation of the injunction then in effect against them; in addition to this in the state of Idaho Katherine Mason and her attorneys were threatening the Sunshine Mining Company with receiver-ship proceedings and with damages unless the judgment in the Idaho Supreme Court was complied with (Ex. 8); in the state of Washington in the case of *Pelkes and Treinies v. Mason, Sunshine Mining Company, et al.*, and in which appointment of receiver without notice had been obtained, Pelkes and Treinies were seeking a money judgment for damages which they alleged they were entitled to by reason of the Sunshine Mining Company refusing to recognize Evelyn H. Treinies as the owner of said identical stock. (R. 256, Ex. 7). With the court records and facts existing as hereinbefore related, the Sunshine Mining Company on the 17th day of March, 1937, (R. 1), filed its bill of interpleader in the United States District Court for the State of Idaho, Northern Division, seeking to bring all the parties before one court, where an ultimate, final and binding adjudication as to the rights of ownership of this stock could be had, and seeking further in said court to restrain and enjoin all of said parties permanently from further litigation in any other court and from further vexing and harassing the Sunshine Mining Company with a multiplicity of suits in regard to this matter.

V

ARGUMENT

JURISDICTION OF FEDERAL DISTRICT COURT
UNDER INTERPLEADER STATUTE

The respondent, Sunshine Mining Company, will address itself first to the question of the jurisdiction of the United States District Court, for the District of Idaho, to proceed under the Interpleader Statute and its power to enter all of the orders, judgments and decrees which it has entered therein. At the outset it must be borne in mind that the Federal Interpleader Act in its present form was not enacted until the 20th day of January, 1936. Therefore, the charges in petitioner's brief that the respondent, Sunshine Mining Company, should have proceeded under the Interpleader Act at the outset of this litigation and before final judgment was entered in the Idaho Court are of no avail, for the reason that the Interpleader Statute was not available to this respondent at that time. The pertinent portion of the Interpleader Act enacted January 20, 1936, Chap. 13, Sec. 1, 49 Statutes at Large, 1096, Title 28, U. S. C. A., Sec. 41, Subdivision 26, provides that the district courts of the United States shall have:

"(26) Original Jurisdiction of Bills of Interpleader, and of Bills in the Nature of Interpleader—

"(a) Of suits in equity begun by bills of interpleader or bills in the nature of bills of interpleader duly veri-

fied, filed by any person, firm, corporation, association, or society having in his or its custody or possession *money or property* of the value of \$500.00 or more, or *having issued a note, bond, certificate, policy of insurance, or other instrument* of the value or amount of \$500.00 or more, or providing for the delivery or payment or the loan of money or property of such amount or value, or *being under any obligation written or unwritten to the amount of \$500.00 or more, if—*

“(i) Two or more adverse claimants, citizens of different States, are claiming to be entitled to such money or property, or to any one or more of the benefits arising by virtue of any note, bond, certificate, policy, or other instrument, or arising by virtue of any such obligation; and

“(ii) The complainant (a) has deposited such money or property or has paid the amount of or the loan or other value of such instrument or the amount due under such obligation into the registry of the court, there to abide the judgment of the court; * * *

“Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.

“(b) Such a suit may be brought in the district court of the district in which one or more of such claimants resides or reside.

“(c) Notwithstanding any provision of Part 1 of this title to the contrary, said court shall have power to issue its process for all such claimants and to issue an order of injunction against each of them, enjoining them from instituting or prosecuting any suit or proceeding in any State court or in any United States court on account of such money or property or on such instrument or obligation until the further order of the

court; which process and order of injunction shall be returnable at such time as the said court or a judge thereof shall determine and shall be addressed to and served by the United States marshals for the respective districts wherein said claimants reside or may be found.

"(d) Said Court shall hear and determine the cause and shall discharge the complainant from further liability; and shall make the injunction permanent and enter all such other orders and decrees as may be necessary or convenient to carry out and enforce the same. * * * (*Italics ours*)

For the stakeholder or party to come under the provisions of this Act the following requisites must appear:

(1) The complainant filing a bill of interpleader must have in its possession money or property of the value of \$500.00 or more, or having issued a certificate or other instrument of the value of \$500.00 or more, or being under an obligation, written or unwritten, to the amount of \$500.00 or more; (2) There must be two or more adverse claimants, citizens of different states claiming to be entitled to such money or property; (3) The complainant must deposit such money or property into the registry of the court, there to abide the judgment of the court; and (4) The suit must be brought in the district court of the district in which one or more such claimants resides or reside.

It is apparent, therefore, that all of the jurisdictional elements are present in the case at bar to bring it squarely within the terms of the statute above cited.

First, the amount involved in this litigation exceeded many times the jurisdictional requirement of the Statute, and this fact was admitted by all parties. (R. 15, 27, 46 & 52)

Second, the necessary diversity of citizenship and a controversy between those citizens as required by the Interpleader Act existed. The Sunshine Mining Company is a citizen of the state of Washington within the meaning of the statute; the defendants, Katherine Mason and T. R. Mason, wife and husband, Lester S. Harrison and Grace G. Harrison, husband and wife, and Walter H. Hanson and Jane Doe Hanson, husband and wife, and F. C. Keane, are all residents and citizens of the state of Idaho within the jurisdiction of the United States District Court for the District of Idaho, Northern Division; Evelyn H. Treinies, the real party in interest, John Pelkes, administrator, J. C. Cheney, as Receiver, and A. W. Hawkins, as judge, were all citizens of the state of Washington. These facts were admitted by all parties. (R. 15, 27, 46 and 52). The necessary diversity of citizenship, therefore, cannot be questioned. Likewise, there can be no question but that a controversy existed between the defendants in the interpleader action over the ownership of the stock. Evelyn H. Treinies and John Pelkes, and now his administrator, have claimed and asserted throughout all of the litigation in the courts in both the state of Idaho and the state of Washington to be the owners of a block of 16,000 shares of stock in the Sunshine Mining Company. On the other side, Katherine Mason and

her husband claim to be the owners of 15,299 shares of the identical block of stock in the Sunshine Mining Company. Only casual examination of the various court records which comprise the evidence in this case is necessary to show that the interests of the parties were adverse in the extreme, and that each was claiming to be the owner of the identical property to the exclusion of the other.

Third, the complainant has deposited money or property into the registry of the court, there to abide the judgment of the court, and has asserted its absolute disinterestedness as to the fund or property. At the time the Sunshine Mining Company filed its bill of interpleader it deposited into the registry of the court \$19,123.75, and thereafter and on later dividend-payment dates again deposited substantial amounts of money into the registry of the court, and in addition to this the complainant likewise tendered into court for adjudication the rights of the parties to the 16,000 shares of stock. It is true that the Sunshine Mining Company did not deposit into the registry of the court at the time it filed its bill of interpleader the certificates of stock which were merely evidence of the ownership of stock in the company. It did not do this for the reason that Evelyn H. Treinies then had in her possession the original certificate which was issued to her at the request of John Pelkes, showing that she was the record owner of 16,000 shares of stock. However, this certificate had been can-

celled by the decree of the Idaho state court. (R. 166). It is likewise true that at the time of filing the bill of interpleader new certificates had been issued to Katherine Mason in lieu of the cancelled certificate to Evelyn H. Treinies to the extent of 15,299 shares, in accordance with the decree entered pursuant to the opinion of the Supreme Court of Idaho. (R. 167). These new certificates standing in the name of Katherine Mason were in her possession. The remaining 701 shares were in the possession of the clerk of the State District Court subject to a levy which had been made thereon by the Sheriff of Shoshone County, Idaho, to satisfy a judgment entered by the Idaho State Court against Pelkes and Treinies for the sum of \$19,429.73. However, all of these certificates of stock as such were not the stock, but simply evidence or indicia of ownership and, standing alone, do not constitute the stock in the company.

"It is well settled that a certificate of stock in a corporation is not the stock itself. It is the mere evidence of the holder's ownership of the stock and of his rights as a stockholder to the extent specified therein, just as a promissory note is merely the evidence of the debt secured thereby, and as title deeds are merely the evidence of the ownership of land. As said by one court, "A share of stock in a corporation consists of a set of rights and duties between the corporation and the owner of the share. These rights and duties are in fact and law quite distinguishable from the certificates and the power to transfer those rights and duties. The certificate is evidence that the person therein named possesses those rights and is subject to those duties, but is not in law the equivalent of those rights

and duties. They are muniments of title, but not the title itself."

Fletcher Cyclopedia Corporations, Permanent Edition, Vol. 11, Sec. 5092, page 55.

To the same effect see *Thompson on Corporations, Third Edition, Vol. 5, Sec. 367, page 310.*

Regardless of the fact that the certificates of stock were not delivered into the registry of the court at the time of filing the bill of interpleader, the requirements of the Interpleader Statute are nevertheless complied with if the complainant has "issued a certificate * * * or other instrument of the value or amount of \$500.00 or more", and it, therefore, cannot be questioned but that the statute is satisfied on this ground. *However, all of the stock standing in the name of Evelyn H. Treinies and in the name of Katherine Mason and all of the dividends paid thereon were deposited and placed in the registry of the United States District Court for the District of Idaho before the court attempted to determine the issues. On the 15th day of May, 1937, on the motion of the respondent, Sunshine Mining Company, the court below entered its order requiring the petitioner, Treinies, to deposit into the registry of the court the certificate of stock standing in her name for 16,000 shares of stock. (R. 120). This order also required the respondents, Masons, to deposit into the registry of the court certificates for stock in their names totalling 15,299 shares, and \$42,225.24 cash received by them from dividends*

paid thereon. (R. 120). This order also restrained the Sheriff of Shoshone County, Idaho, from selling, disposing or in any way transferring the certificates of stock for 701 shares then in his possession until the further order of the Court. (R. 120). Also the order required the respondent, Sunshine Mining Company, to deposit into the registry of the court as declared during the pendency of such suit any further cash dividends on the 16,000 shares of stock. (R. 122). *All of the parties fully complied with this order without objection or exception.* (R. 120). *Thus, before the court attempted to determine the issues, the entire subject matter of this litigation was in the registry of the court.*

Fourth, the suit was brought in the District Court of the district in which one or more of the claimants reside or resides. The suit was instituted in the District Court of the United States for the District of Idaho, Northern Division, being the district in which most of the claimants resided. This fact was admitted by all parties.

It is, therefore, apparent that all of the jurisdictional elements which are required by the statute are present in the case at bar and bring it squarely within the terms of the interpleader act.

The question of jurisdiction of the District Court to proceed under the Interpleader Act was very aptly stated in the opinion of the Circuit Court of Appeals, Ninth Circuit.

"The stock in controversy had a value of more than \$500.00. Prior to filing its bill, the company had issued certificates for the stock and was under an obligation to pay the rightful owner thereof accrued and accruing dividends thereon. Accrued dividends, at the time of filing the bill, amounted to more than \$500. The company, at that time, paid the then accrued dividends into the registry of the court, there to abide the judgment of the court. Dividends subsequently accruing were likewise so paid. Also, while the suit was pending, certificates representing the stock in controversy were deposited in the registry of the court. Appellants (Treinies, the administrator and the receiver) claimed the stock and dividends adversely to the Masons. The Masons were citizens and residents of Idaho. Appellants were citizens and residents of Washington. Clearly, therefore, the court had jurisdiction."

Treinies v. Sunshine Mining Company, 99 Fed. (2d) 651, at 653.

The jurisdictional requirements were also set forth as follows:

"The bill of complaint is founded upon the Interpleader Act and seeks the remedy which it affords.

"Sec. 24 (26) confers jurisdiction on the district courts in suits of interpleader or in the nature of interpleader, by plaintiffs who are under an obligation to the amount of \$500.00 or more, the benefits of which are demanded by two or more adverse claimants who are citizens of different states. By subsection 26 (a) 'Such a suit in equity may be entertained although the titles or claims of the conflicting claimants do not have a common origin, or are not identical, but are adverse to and independent of one another.' And by subsection 26 (a) (ii) and (d) complainant, upon satisfy-

ing jurisdictional requirements of the Act, and depositing the money or property in the registry of the court, or upon giving a prescribed bond, is entitled to a decree discharging him from further liability and enjoining the claimants from further proceedings in other courts to recover the sum claimed."

Worcester County Trust Company vs. Riley, 302 U. S. 292 at 294; 58 S. Ct. 185; 82 L. Ed. 268.

To the same effect are:

Sanders v. Armour Fertilizing Co., 292 U. S. 190; 54 S. Ct. 677; 78 L. Ed. 1206;

Cramer v. Phoenix Mutual Life Insurance Company (C. C. A. 8), 91 Fed. Rep. (2d) 141; Writ of certiorari denied, 302 U. S. 739; 58 S. Ct. 141; 82 L. Ed. 571; Petition for rehearing denied, 302 U. S. 778; 58 S. Ct. 263; 82 L. Ed. 602;

Ross v. International Life Insurance Company (C. C. A. 6) 24 Fed. (2d) 345;

Dugas v. American Surety Company, 300 U. S. 414, 57 S. Ct. 515, 81 L. Ed. 720;

Fidelity & Deposit Company of Maryland v. A. S. Reid & Co. (D. C. Pa.) 16 Fed. (2d) 502;

John Hancock Mutual Life Inc. v. Kegan, 22 Fed. Sup. 326;

Mallors v. Equitable Life Insurance Co. (C. C. A. 7), 87 Fed. (2d) 233; Cert. denied, 57 S. Ct. 786, 301 U. S. 685, 81 L. Ed. 1343;

Metropolitan Life Insurance Co. v. Segaritis (D. C. Pa.) 20 Fed. Sup. 739;

Dee v. Kansas City Life Insurance Co. (C. C. A. 7) 86 Fed. (2d) 813;

Klaber v. Maryland Casualty Company (C. C. A. 8), 69

- Fed. (2d) 934, 106 A.L.R. 617, note at 626;
United Life & Accident Insurance Co. v. Reynolds (C. C. A. 2), 62 Fed. (2d) 776;
Penn Mutual Life Insurance Co. v. Meguire (D. C. Ky.), 13 Fed. Sup. 967;
Eagel, Star & British Dominions v. Tadlock (D. C. Cal. 1936), 14 Fed. Sup. 933;
Vogel v. New York Life Insurance Company (C. C. A. 5), 55 Fed. (2d) 205; Cert. denied, 53 S. Ct. 9, 287 U. S. 604, 77 L. Ed. 525;
Thomas Kay Woolen Mill Co. v. Sprague (D. C. Ore.), 259 Fed. 338;
Rule 22 Federal Rules of Civil Procedure.

It is the contention of respondent, Sunshine Mining Company, that the case of *Sanders v. Armour Fertilizing Works*, *supra*, conclusively establishes the jurisdiction of the District Court to determine the ownership of the stock between Katherine Mason and Evelyn H. Treinies, and her predecessor in interest. While it is true the case of *Sanders v. Armour Fertilizing Works*, *supra*, arose under the Interpleader Act of 1926, the case is nevertheless directly in point, inasmuch as the 1936 Act is substantially the same as the 1926 Act except that the scope of the 1936 Act was enlarged. The court, in discussing the 1926 Act in the *Sanders* case, 292 U. S., at page 199, said:

"The general purpose and effect of the Act of May 8, 1926, were also well stated below—

"Suits for interpleader in which actions in other courts are enjoined were familiar to equity when the Constitution was adopted (see *Spring v. South Carolina Ins. Co.*, 8 Wheat. 268, 5 L. Ed. 614) and are one of the forms of controversy to which, when arising between citizens of different States, the Federal judicial power was extended. The Act enlarges the processes of the District Court to cover a broad territory, but otherwise authorizes only an ordinary form of equitable relief. . . . The District Court of course is bound on an interpleader to give full faith and credit to the garnishment proceedings in Illinois. . . .

"We do not think the filing of the Federal interpleader and the payment thereunder of the money into the District Court in Texas operated to bring it under the dominion of Texas law. The applicant for interpleader often has a choice of forum, and he cannot at his will subject the rights of the contesting claimants to one set of laws rather than another. The purpose of the interpleader statute was to give the stakeholder protection, but in no wise to change the rights of the claimants by its operation. The interpleader is a suit in equity, and equitable principles and procedure are the same throughout the Federal jurisdiction. The court is to weigh the right or title of each claimant under the law of the State in which it arose, and determine which according to equity is the better. The decision should be the same whether the interpleader is filed in Illinois or in Texas. No one's rights are intended to be altered by paying the fund into the court, which as an impartial neutral is to determine them.'"

There cannot be any question but that the District Court of the United States, for the District of Idaho, Northern Division, did have jurisdiction of the parties and the subject matter and, having jurisdiction, it had the power

to determine the controversy existing between the claimants to the stock.

IDAHO STATE COURT JUDGMENT MUST BE GIVEN FULL FAITH AND CREDIT

Suit was instituted in the State District Court of Idaho by Katherine Mason and her husband against John Pelkes, Evelyn H. Treinies, and Sunshine Mining Company on the 4th day of August, 1934. (R. 126). At the time this suit was instituted the Sunshine Mining Company was subject to the jurisdiction of the Idaho state court by reason of the fact that all of its mining property was located within the jurisdiction of that court, and it has complied with the law of the state of Idaho with reference to foreign corporations doing business therein. Evelyn H. Treinies and John Pelkes, however, were not subject to the jurisdiction of the Idaho state court because they were not residents of the state of Idaho and service was not had upon them within the jurisdiction of the court. Nevertheless, both Pelkes and Evelyn H. Treinies appeared generally in that case. (R. 129 and 139). The Idaho state court, therefore, had jurisdiction of the parties and of the subject matter involved in that action.

However, before that case was tried, certain proceedings were had in the Superior Court of the State of Washington, in and for Spokane County, in the matter of the estate of Amelia Pelkes, deceased. These proceedings were

between Katherine Mason on the one side and John Pelkes on the other. Evelyn H. Treinies was not a party to any of these proceedings in the estate matter and neither was the Sunshine Mining Company. As a result of these proceedings between Katherine Mason and John Pelkes in the Superior Court of the State of Washington, an order was entered entitled "Findings and Order Approving Partition, Correcting Receipts for Distributive Shares and Discharging Executor". (R. 282). This is the purported judgment on which the petitioner herein, Evelyn H. Treinies, now relies to establish her ownership to the stock in question.

For the purpose of this part of the argument, the respondent, Sunshine Mining Company, will admit the validity and the legality of the order entered in the Amelia Pelkes Estate proceedings, and will admit further, for the purpose of argument, that said judgment or order established the ownership of the stock in Evelyn H. Treinies' assignor namely, John Pelkes. As stated before, the Sunshine Mining Company was not in any way a party to any of these proceedings which culminated in the entry of the order of May 31, 1935, (R. 282), but, admitting the validity of said order as a judgment, it could do nothing more than establish that John Pelkes at a previous time was the owner of 30,598 shares of stock in the Sunshine Mining Company because at the time the order was entered, May 31,

1935, Pelkes did not own a share of stock in the Sunshine Mining Company. This judgment the Sunshine Mining Company has recognized. John Pelkes, as the record shows, had disposed of all of his stock in the Sunshine Mining Company. No one questions but what all of this block of 30,593 shares of stock was transferred on the records of the Sunshine Mining Company in accordance with the instructions of John Pelkes. In other words, the Sunshine Mining Company did treat John Pelkes as the absolute owner of 30,598 shares of its stock and recognized his right to transfer it on the books of the corporation and did transfer it in accordance with his instructions. Of this block of stock Evelyn H. Treinies received 16,000 shares, which is the subject matter of this controversy.

At this point, therefore, neither John Pelkes nor Evelyn H. Treinies could in any way question the action of the Sunshine Mining Company because the company recognized Pelkes first as the owner of 30,593 shares of its stock and permitted it all to be transferred on the books of the company in accordance with his instructions. Subsequently and from the 13th day of November, 1933, (R. 157), being the date on which Pelkes transferred 16,000 shares to Evelyn H. Treinies, the company recognized Evelyn H. Treinies as the owner of this stock transferred to her by John Pelkes, and, further, the Sunshine Mining Company paid to her the dividends accruing on her stock.

After May 31, 1935, the date on which the findings and order approving partition, correcting receipts for distributive shares and discharging executor (R. 282) was entered in the Superior Court of the State of Washington, John Pelkes amended his answer in the case of *Mason v. Pelkes et al* in the state district court of Idaho and, among other things, set up the order of May 31, 1935, as a defense. Following his amendment, the case was tried, all parties appearing generally. Following the trial, judgment and decree was entered, wherein Katherine Mason was adjudged to be the owner of 7649 shares of said stock and Evelyn H. Treinies 3351 shares, and the Sunshine Mining Company was ordered to recognize the ownership of said respective parties. (R. 165).

From this judgment and decree all parties appealed to the Supreme Court of the state of Idaho, and the Supreme Court of the state of Idaho modified the judgment of the trial court and decreed Katherine Mason to be the owner of 15,299 shares. (R. 167). Subsequently John Pelkes and Evelyn H. Treinies petitioned for writ of certiorari to the Supreme Court of the United States, which petition was denied. (57 S. Ct. 319, 299 U. S. 615, 81 L. Ed. 453). The judgment of the Supreme Court of Idaho, therefore, became a final judgment adjudicating the rights of all the parties, namely, Katherine Mason was adjudged to be the owner of 15,299 shares of stock and the dividends accrued

and accruing thereon, and the Sunshine Mining Company was ordered to recognize her rights of ownership. Whatever may be the rights between Evelyn H. Treinies and Katherine Mason, the fact remains that the judgment of the Idaho Supreme Court is a judgment finally determining the rights of the parties so far as the Sunshine Mining Company is concerned, and the Sunshine Mining Company was bound to recognize the decree of the Idaho court and that judgment must be accorded full faith and credit in the state of Washington.

On this question the Supreme Court of the United States, in the case of *Roche vs. McDonald*, 275 U. S. 449, 72 L. Ed. 365, at page 368, said:

"It is settled by repeated decisions of this court that the full faith and credit clause of the Constitution requires that the judgment of a state court which had jurisdiction of the parties and the subject-matter in suit, shall be given in the courts of every other state the same credit, validity and effect which it has in the state where it was rendered, and be equally conclusive upon the merits; and that only such defenses as would be good to a suit thereon in that state can be relied on in the courts of any other state. *Mills v. Duryee*, 7 Cranch, 481, 484, 3 L. Ed. 411, 413; *Hampton v. M'Connel*, 3 Wheat. 234, 235, 4 L. Ed. 378, 379; *D'Arcy v. Ketchum*, 11 How. 165, 175, 13 L. Ed. 648, 652; *Cheever v. Wilson*, 9 Wall. 108, 123, 19 L. Ed. 604, 608; *Hancock Nat. Bank v. Farnum*, 176 U. S. 640, 643, 44 L. Ed. 619, 621, 20 Sup. Ct. Rep. 506; *Tilt v. Kelsey*, 207 U. S. 43, 57, 52 L. Ed. 95, 101, 28 Sup. Ct. Rep. 1; *Converse v. Hamilton*, 224 U. S. 243, 259, 56 L. Ed. 749, 755, 32 Sup. Ct. Rep. 415, Ann. Cas. 1913D,

1292. This rule is applicable where a judgment in one state is based upon a cause of action which arose in the state in which it is sought to be enforced, as well as in other cases; and the judgment, if valid where rendered, must be enforced in such other state, although repugnant to its own statutes. *Christmas v. Russell*, 5 Wall. 290, 302, 18 L. Ed. 475, 478; *Fauntleroy v. Lum*, 210 U. S. 231, 236, 52 L. Ed. 1039, 1041, 28 Sup. Ct. Rep. 641; *Kenney v. Supreme Lodge*, L. O. M. 252 U. S. 411, 415, 64 L. Ed. 638, 640, 10 A.L.R. 716, 40 Sup. Ct. Rep. 371."

And again the court said on page 369:

"* * * The court of Oregon has jurisdiction of the parties and of the subject-matter of the suit. Its judgment was valid and conclusive in that state. The objection made to enforcement of that judgment in Washington is, in substance, that it must there be denied validity because it contravenes the Washington statute and would have been void if rendered in a court of Washington; that is, in effect, that it was based upon an error of law. It cannot be impeached upon that ground. If McDonald desired to rely upon the Washington statute as a protection from any judgment that would extend the force of the Washington judgment beyond six years from its rendition, he should have set up that statute in the court of Oregon and submitted to that court the question of its construction and effect. And even if this had been done, he could not thereafter have impeached the validity of the judgment because of a misapprehension of the Washington law. In short, the Oregon judgment, being valid and conclusive between the parties in that state, was equally conclusive in the courts of Washington, and under the full faith and credit clause should have been enforced by them."

We submit that the case of *Roche vs. McDonald* is decisive on this point and, regardless of the interpleader action, the

Idaho judgment so far as the Sunshine Mining Company is concerned is binding upon all of the parties and is entitled to full faith and credit under Article IV Section 1 of the Constitution of the United States.

BILL OF INTERPLEADER NOT AGAINST STATE OF WASHINGTON

The petitioner in her brief contends that the bill of interpleader is in fact a suit by a citizen of one state in the Federal District Court against another state, and contends that the District Court did not have jurisdiction because the action was contrary to the Eleventh Amendment of the Federal Constitution. In support of this contention, petitioner relies upon the case of *Worcester County Trust Co. v. Riley*, 58 S. Ct. 185, 302 U. S. 292.

In the *Worcester County Trust Co. v. Riley* case, *supra*, the executor of a last will and testament of a decedent which had been probated in Massachusetts sought, through a bill of interpleader, to implead the Commissioner of Corporations and Taxation of the Commonwealth of Massachusetts and officers of the state of California, all charged with the duty of administering death tax statutes in their respective states, and the court held that a bill of interpleader would not lie in such a case because the suit was in effect an action by a citizen of one state against another state, which action the Eleventh Amendment of the Constitution for-

bids. The court in the *Worcester County Trust Co.* case, *supra*, 302 U. S., at 299 said:

"Hence it cannot be said that the threatened action of respondents involves any breach of state law or of the laws or Constitution of the United States. Since the proposed action is the performance of a duty imposed by the statute of the state upon state officials through whom alone the state can act, restraint of their action, which the bill of complaint prays, is restraint of state action, and the suit is in substance one against the state which the Eleventh Amendment forbids. *We do not pass on the construction of the Interpleader Act or its applicability in other respects.*" (Italics ours)

From the foregoing, it is clear that the court denied relief simply because such a proceeding was not permitted under the Eleventh Amendment. The court expressly did not pass upon the construction of the Interpleader Act or its applicability in any other respect.

Apparently counsel for the petitioner reasoned that the State of Washington was in fact a party to this litigation by reason of the fact that A. W. Hawkins, Judge of the Superior Court of the State of Washington in and for Yakima County, Pelkes Administrator, and J. C. Cheney, as Receiver, were made parties defendant. Examination of the pleadings in the interpleader action will disclose that Judge Hawkins, while named a party, was not at any time in any way enjoined from proceeding with the case, and will further show that Judge Hawkins, by his answer and return to the

show cause order, did not question the jurisdiction of the Federal District Court but simply expressed a willingness to await the decision and disposition of the case as determined by the Federal District Court. (R. 14, 15). Further, he has not at any time appealed or complained in any way against any of the rulings made or judgments entered in the interpleader action. So far as J. C. Cheney, as Receiver, is concerned, he has not at any time complained or questioned the jurisdiction of the Federal District Court and in fact appeared in the interpleader action in the same manner as Judge Hawkins, and the receiver adopted as his answer the answer of Judge Hawkins. (R. 46). It is true that J. C. Cheney, as Receiver, did join in the appeal with Evelyn H. Treinies to the Circuit Court of Appeals, but he has not joined with her in her application for writ of certiorari, and is not now before this court complaining in any respect against the judgment or decrees entered herein. While J. C. Cheney, as Receiver, was enjoined by the temporary restraining order from taking any proceedings pending the determination of the interpleader action, yet, when the judgment and decree of the Federal District Court was entered he was not in any way enjoined or restrained (R. 323). In fact, he was not even mentioned in the judgment and decree of the Federal District Court. (R. 321).

It is well settled that the court will not hear any complaints or review any proceedings, even though errone-

eous, where a party has not appealed and is not before the court on appeal.

Lloyd et al v. Elting, 287 U. S. 329, 53 S. Ct. 77 L. Ed. 341;

Federal Trade Commission v. Pacific States Paper Assn., 47 S. Ct. 255, 273 U. S. 52, 71 L. Ed. 534;

Marine Transport Corp. v. Dreyfus, 52 S. Ct. 166, 284 U. S. 263, 76 L. Ed. 282;

Southern Pacific R. Co., v. United States, 18 S. Ct. 18, 168 U. S. 1, 42 L. Ed. 355.

The petitioner herein also contends that the Federal Court under the interpleader act was not empowered and could not interfere with the jurisdiction of the state courts. Or stated in another way, the petitioner contends that the Federal Courts are not authorized under the interpleader act to set themselves up as a court of review to reverse or void judgments of a state court, as being attempted in this case. The Interpleader Act, Title 28, U. S. C. A., Section 41, Subdivision 26, (c) provides:

"Notwithstanding any provision of Part I of this title to the contrary, said court shall have power to issue its processes for all such claimants and to issue order of injunction against each of them enjoining them from instituting or prosecuting any suit or proceedings in any state court . . . on account of such money or property or other instrument or obligation until further order of the court. . . ."

In the case at bar the United States District Court did not interfere with the jurisdiction of the state court of Idaho nor the state court of Washington, neither did it set itself up as a tribunal to review, modify, reverse, or cancel judgments of the state court. Said court simply issued its process to the claimants and enjoined one group of claimants from instituting or prosecuting any further suit or proceedings in the state court with reference to the stock in question. As was said in the Supreme Court case of *Sanders v. Armour Fertilizing Works*, 292 U. S. 190, at page 199:

"Suits for interpleader in which actions in other courts are enjoined were familiar to equity when the Constitution was adopted (see *Spring v. South Carolina Ins. Co.* 8 Wheat. 268, 5 L. Ed. 614) and are one of the forms of controversy to which, when arising between citizens of different States, the Federal judicial power was extended. The Act enlarges the processes of the district Court to cover a broader territory, but otherwise authorizes only an ordinary form of equitable relief. . . ."

The United States District Court in this case therefore did have the jurisdiction and the authority under the Interpleader Act to enjoin one group from proceeding with litigation and the District Court in no way set itself up as a court of review for the State Court, nor was it in any way attempting to interfere with the jurisdiction of the State Court.

Admitting however, for the purpose of argument that A. W. Hawkins as Judge and J. C. Cheney as Receiver, were improperly made parties defendant in the interpleader ac-

tion, and admitting for the purpose of argument that joining of said parties as defendants was tantamount to making the State of Washington a party defendant, and admitting further that said parties had properly appealed and were before the Supreme Court complaining of the rulings made against them, the action as to them could only be dismissed. Such, however, would not affect the interpleader action insofar as real parties claimant in interest are concerned; namely, Katherine Mason and her husband on one side, and Evelyn H. Treinies on the other. Unquestionably these real parties in interest were properly before the court, and the District Court had jurisdiction to enjoin Evelyn H. Treinies and her assignor, John Pelkes' Administrator, from proceeding with their litigation in the State Court of Washington.

**IDAHO STATE COURT JUDGMENT AND DECREE IS
RES JUDICATA AND PARTIES ARE ESTOPPED
FROM QUESTIONING VALIDITY**

The suit of Katherine Mason and her husband against John Pelkes and Evelyn H. Treinies and Sunshine Mining Company in the Idaho State Court was an action by Katherine Mason to enforce an oral trust against stock in the hands of Evelyn H. Treinies, and the action was, therefore, cognizable by a court of general jurisdiction. That jurisdiction was vested in the Idaho State District Court. All parties appeared generally in said case, and the court, therefore, had

jurisdiction of both the parties and the subject matter. Concerning this question, the District Court below said:

What then was the nature of the action in the Idaho Court? It was simply one to enforce an oral trust growing out of the division of personal property that had been derived from a decree of distribution after it has been completely distributed and therefore the cause of action was cognizable by a court of general equitable jurisdiction. That jurisdiction was vested in the Idaho Court. Pelkes and Treinies appeared in the Idaho Court which gave it jurisdiction over both parties and the subject matter. That jurisdiction attached before Mrs. Mason's petition was filed in December, 1934, in the Superior Court of Washington. The Idaho Court then acquired jurisdiction first of the parties and the controversy over the ownership of the 15,299 shares of stock, and the decision of the highest Court of that state which was not disturbed by the Supreme Court of the United States when in denying Pelkes' and Treinies' application for writ of certiorari, is final and conclusive upon the Federal Courts. While a denial of a petition for a writ of certiorari in a particular case does not constitute a precedent for any other case, yet it is an affirmance of the judgment in the particular case sought to be reversed. When as disclosed by the present record, which includes the record in the Idaho case, where the enforcement of a trust growing out of a division of the shares of stock involved, and the Supreme Court of Idaho having concluded, when in considering the issue of fact relative to the controversy of ownership of the shares of stock between the parties, to be owned by Katherine Mason, its decision upon that issue of fact is conclusive upon which it is based, and final and conclusive upon the parties in all future litigation between them, when as said, it had jurisdiction first to determine that issue. The scope of the issue as to the existence of an oral trust now presented, involved in the Idaho case an adjudication of that issue. A reading

of its opinion leaves no doubt that the ownership in the 15,299 shares of stock was awarded to Katherine Mason." *Sunshine Mining Co. v. Treinies*, 19 F. Supp. 587 at 593.

Since the Sunshine Mining Company was made a party to the case in the Idaho State Court and since John Pelkes presented to that court for decision the order entered in the estate proceedings in the Superior Court of the State of Washington and since all questions in regard to that order and the rights of various parties were fully and completely litigated in that action, the judgment entered in the Idaho State District Court is *res judicata*.

"The questions presented for our determination relate to the operation of this judgment as an estoppel against the prosecution of the present action and the admissibility of the evidence to connect the present plaintiff with the former action as a real party in interest.

"In considering the operation of this judgment, it should be borne in mind, as stated by counsel, that there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. *In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose.* Thus, for example; a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it,

although it be subsequently alleged that perfect defenses actually existed, of which no proof was offered, such as forgery, want of consideration, or payment. If such defenses were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed. The language, therefore, which is so often used, that a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented, is strictly accurate, when applied to the demand or claim in controversy. Such demand or claim, having passed into judgment, cannot again be brought into litigation between the parties in proceedings at law, upon any ground whatever." (Italics ours).

Cromwell v. County of Sac. 94 U. S. 351, 24 L. Ed. 195.

"The general principle announced in numerous cases is that a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question, or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all

matters properly put in issue and actually determined by them.

"Among the cases in this court that illustrate the general rule are *Hopkins v. Lee*, 19 U. S. 6, Wheat. 109, 113 (5:218, 219); *Smith v. Kernochen*, 48 U. S. 7 How. 198, 216 (12:666, 673); *Thompson v. Roberts*, 65 U. S. 24 How. 233, 240 (16:648, 650); *Washington, Alexandria, & Georgetown S. P. Co. v. Sickles*, 65 U. S. 24 How. 333, 340, 341, 343 (16:650, 652, 653); *Russell v. Place*, 94 U. S. 606, 608 (24:214, 215); *Cromwell v. Sac. County*, 94 U. S. 351 (24:195); *Campbell v. Rankin*, 99 U. S. 261 (25:435); *Mason Lumber Co. v. Buchtel*, 101 U. S. 638 (25:1072); *Bissell v. Spring Valley Township*, 124 U. S. 225, 230 (31:411, 413); and *Johnson Co. v. Wharton*, 152 U. S. 253 (38:430)." (The court then proceeds to review the above authorities on this point.)

Southern Pacific R. Co. v. United States, 18 S. Ct. 18, 168 U. S. 1, 42 L. d. 355.

The real claimants and parties in interest having fully and completely litigated the issues as to the ownership of the stock in the Idaho State Court, and John Pelkes having presented the order entered in the Probate Court of the State of Washington to the Idaho Court for decision, and that court having entered its judgment and decree finally determining the issues, the case is *res judicata*, and Evelyn H. Treinies and her assignor, John Pelkes, are estopped and precluded from re-litigating the same issues in the state of Washington as attempted in their amended complaint in the Superior Court of the State of Washington. (R. 244, 256).

VI

CONCLUSION

1. The district Court of the United States for the district of Idaho, Northern Division, has jurisdiction under Title 28 U. S. C. A., Sec. 41, Subdivision 26, entitled "Original Jurisdiction of Bills of Interpleader and of Bills of the Nature of Interpleader" enacted on the 20th day of January, 1936, Chap. 13, Sec. 1, 49 Statutes at Large, 1096, to hear and determine the rights of the adverse claimants to the stock here in question.

2. The judgment entered in the State District Court of Idaho, pursuant to the decision of the Supreme Court of Idaho, all parties having appealed, which decision the Supreme Court of the United States refused to review on writ of certiorari, is entitled to full faith and credit in the state of Washington, and must be given full faith and credit by the courts of the state of Washington in any suit against the Sunshine Mining Company.

3. The Eleventh Amendment of the Constitution of the United States did not forbid the bill of interpleader in this case because the suit is not by a citizen of one state against another state, but is a suit directly under the Interpleader Act of 1936 against two adverse claimants, citizens of different states, compelling them to interplead and have their rights adjudicated.

4. The judgment and decree of the Idaho State District Court entered pursuant to the decision of the Supreme Court of Idaho is res judicata and binding upon all of the parties hereto, and they are estopped to re-litigate the same issues in the State of Washington.

Respondent, Sunshine Mining Company, respectfully submits that the opinion of the Circuit Court of Appeals, Ninth Circuit, should be affirmed.

Respectfully submitted,

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